



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE: (615) 532-6830 FAX: (615) 741-4000

August 8, 2018

John Meetz

john@wsia.org

Wholesale & Specialty Insurance Association
4131 N. Mulberry Drive, Suite 200
Kansas City, MO 64116

Re: Request for Interpretive Opinion No. 02-18
Interpretation of Licensed Surplus Lines Insurer Under Tenn. Code Ann. § 56-14-104(e)

Dear Mr. Meetz:

The Insurance Division ("Division") of the Tennessee Department of Commerce and Insurance ("Department") is in receipt of your request for an interpretive opinion regarding Tenn. Code Ann. § 56-14-104(e), as recently enacted in 2018 Tenn. Public Acts Ch. 580.

You have asked for an interpretive opinion on the effect of the contradictory use of the words "with an eligible surplus lines insurer licensed pursuant to this chapter" in the new Tenn. Code Ann. § 56-14-104(e).

2018 Tenn. Public Acts Ch. 580 added the following language as a new subsection (e) in Tenn. Code Ann. § 56-14-104:

An agent licensed pursuant to this section may accept insurance provided for in this chapter from any insurance producer licensed pursuant to chapter 6 of this title and place that insurance with an eligible surplus lines insurer licensed pursuant to this chapter. The agent may compensate the insurance producer according to § 56-14-115.

You have noted that this new statutory language uses the phrase "with an eligible surplus lines insurer licensed pursuant to this chapter" and contradicts the language used in Tenn. Code Ann. § 56-14-102(18). Tenn. Code Ann. § 56-14-102(18) defines a "surplus lines insurer" as: "an unauthorized company in which a nonadmitted insurance coverage is placed or may be placed under this chapter . . ." Furthermore, Tenn. Code Ann. § 56-14-102(12) defines "unauthorized company" as "an insurance company not licensed to transact business in this state under this title."

When interpreting statutes, we must first look at the plain language of the relevant statute and determine if a statute is capable of conveying more than one meaning. *Spires v. Simpson*, 539 S.W.3d 134, 143-44 (Tenn. 2017). If a statute is capable of multiple meanings, then the statute is deemed to be ambiguous and we may “construe the statute’s meaning by examining the broader statutory scheme, the history of the legislation, or other sources.” *Id.* at 144. It is apparent that Tenn. Code Ann. § 56-14-104(e) is ambiguous when compared with the definitions found in Tenn. Code Ann. § 56-14-102.

One possible interpretation of the new Tenn. Code Ann. § 56-14-104(e) is that the General Assembly intended to allow surplus lines agents to accept policies from insurance producers and to place said business with licensed surplus lines insurers. Were this interpretation to prevail, this would effectively render the new Tenn. Code Ann. § 56-14-104(e) meaningless since there are no “licensed surplus lines insurers” in this State and there is no provision within any other section of Title 56, Chapter 14 to license surplus lines insurers. Another principle of statutory interpretation is that statutes should be interpreted “so that no part will be inoperative, superfluous, void or insignificant” *Tidwell v. Collins*, 522 S.W.2d 674 (Tenn. 1975).

The other possible interpretation is that the General Assembly intended the word “licensed” as used in Tenn. Code Ann. § 56-14-104(e) to mean the process by which an insured in this state could lawfully procure coverage from an unauthorized insurer. *See* Tenn. Code Ann. §§ 56-14-103 and 109.

This interpretation is consistent with the legislative history of 2018 Tenn. Public Acts Ch. 580. This act was introduced in the 2018 session of the General Assembly as HB 2094 and SB 2510. The bills were adopted by both houses of the General Assembly on March 5, 2018. The bills were placed on each chamber’s respective consent calendars so there was no floor presentation or debate. The House Insurance and Banking Subcommittee heard the bill on February 14, 2018, unanimously recommended it to the full House Insurance and Banking Committee, which unanimously recommended it for passage on February 21, 2018. At each session the bill sponsor, Representative Michael Curcio, explained that the bill was meant only to allow individual insurance producers to arrange to place insurance on the surplus lines market with licensed surplus lines agents and to receive a portion of the earned commission. Senator Bill Ketron gave a similar explanation to the Senate Commerce and Labor Committee on February 27, 2018, which likewise unanimously recommended the bill’s adoption.

Given that Tenn. Code Ann. § 56-14-104(e) is ambiguous with the definitions found in Tenn. Code Ann. § 56-14-102, it is appropriate to interpret Tenn. Code Ann. § 56-14-104(e) consistently with its legislative history to read the phrase “eligible surplus lines insurer licensed” to refer to any surplus lines insurer meeting the definition found in Tenn. Code Ann. § 56-14-102(18).

You also asked for confirmation that the new statutory language found in Tenn. Code Ann. § 56-14-104(e) does not now require unauthorized insurers writing business in this State via the surplus lines market to become licensed in this state. It is plain from both the legislative history and the four corners of the legislation adopted by the General Assembly that there was no intent

to create a new licensing program for unauthorized insurers participating in the surplus lines marketplace.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Whitehouse", written over a horizontal line.

Benjamin A. Whitehouse
Assistant General Counsel
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243
(615) 741-2616
Ben.whitehouse@tn.gov